

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KRISTEN BARNETT,

Charging Party,

-v-

BEACHES BEAUTY SUPPLY aka
CK ONE LLC and CAL FUSS,

Respondents.

Case # 0055011515 and
0055011516

**ORDER AFFIRMING
IN PART, REVERSING IN PART,
AND REMANDING TO THE
HEARINGS BUREAU
FOR A REDETERMINATION**

Kristen Barnett (Barnett) filed a complaint of pregnancy related discrimination against Beaches Beauty Supply aka CK One (Beaches) and Cal Fuss (Fuss) with the Department of Labor and Industry. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined Beaches and Cal Fuss discriminated against Barnett and awarded Barnett damages. Beaches and Fuss filed an appeal with the Montana Human Rights Commission (Commission) and requested oral argument. The Commission considered the matter on July 25, 2007. David Cotner and Erika Peterman appeared on behalf of Beaches and Fuss. David Cotner argued on behalf of Beaches and Fuss. Tim Kelly appeared and argued on behalf of Barnett.

In their appeal, Beaches and Fuss asserted the hearing officer erred in concluding that both Beaches and Fuss discriminated against Barnett. Beaches argued the hearings officer erred as a matter of law in concluding it did not legitimately

terminate Barnett from employment. Fuss asserted that hearing officer erred as a matter of law in concluding that as an officer of a limited liability company, Fuss could still be personally liable for discrimination. Beaches and Fuss also asserted the damage award was clearly erroneous because they argued Barnett failed to mitigate her damages when she decided to go to college.

Barnett argued the hearing officer's determination as to liability and damages was based on substantial evidence and contained no errors of law.

After considering the written and oral arguments of the parties and the record in the case, the Commission hereby concludes the hearing officer's decision is affirmed in part, reversed in part, and is remanded for a redetermination on damages. Specifically, the Commission affirms the hearing officer's decision as to the liability of Beaches. The Commission reverses the hearing officer's decision as to the liability of Fuss because the Commission concludes the findings as to Fuss' personal actions are clearly erroneous. Regarding damages, the Commission reverses the hearing officer's decision. The Commission concludes the hearing officer's determination regarding compensatory damages is not supported by competent substantial evidence because it includes a damage award for the period of time Barnett chose to go to college. The Commission also concludes the emotional distress damages are not supported by competent substantial evidence. The Commission remands to the hearing officer for a redetermination on the entire damage awarded Barnett from Beaches.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where

the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of September, 2007.

Chair Ryan Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on this _____ day of September, 2007.

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